

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION**

W.T. DAVIS, INDIVIDUALLY, et al.

PLAINTIFFS

v.

CASE NO. 6:89-CV-06088

HOT SPRINGS SCHOOL DISTRICT, et al.

DEFENDANTS

**BRIEF IN SUPPORT OF DEFENDANTS' MOTION
FOR RELIEF FROM SETTLEMENT AGREEMENT**

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INTRODUCTION

For more than 30 years, the public school districts of Garland County, Arkansas (“Districts”)¹ have complied diligently with a settlement agreement (“Settlement Agreement”) that the Court adopted as a consent decree in this desegregation action. Over that time, as documented in their affidavits and explained in this brief, each of the Districts has met every obligation under the Settlement Agreement, and their compliance has been duly documented by the State of Arkansas. Those efforts have eliminated the vestiges of past discrimination in the Districts to the extent practicable.

Over the past couple of years, the parties have tried to negotiate an agreed termination of the Settlement Agreement and its ongoing obligations. Those efforts have not succeeded. The Districts now present this issue to the Court so that they can be freed from those obligations and can implement current Arkansas school choice law for the 2024–25 school year.

It is time for the Districts to be released from the obligations in the Settlement Agreement and from the Court’s supervision. The Court should therefore grant the Districts’ motion to be released from the Settlement Agreement and declare them unitary.

¹ The Districts are the Cutter Morning Star School District, Fountain Lake School District, Hot Springs School District, Jessieville School District, Lake Hamilton School District, Lakeside School District, and Mountain Pine School District.

PROCEDURAL AND FACTUAL BACKGROUND

I. Procedural History.

When the plaintiffs filed the action in 1989, they sought consolidation of Districts based on a theory that having seven separate school districts perpetuated a history of segregation dating back to the period when Garland County maintained separate schools for black and white children. Doc. 1 at 5–11, ¶¶ 17–30. The parties settled the action three years later, and the Court approved the Settlement Agreement. Doc. 82; Ex. H, Settlement Agreement.

The Settlement Agreement did not grant the relief requested in the complaint by consolidating the Garland County public schools or anything of the sort. Nor did the Districts admit to any constitutional violations. Rather, the Settlement Agreement required the Districts and the State of Arkansas to conduct a list of required activities:

- Implement the School Choice Act of 1989.
- Create the Garland County Education Consortium.
- Provide staff development training.
- Provide self-esteem and multicultural education materials.
- Provide staff training about adequately measuring and analyzing, in a nondiscriminatory, unbiased manner, students' academic achievement.
- Provide a workshop on encouraging greater participation by minority and underprivileged students in gifted and talented programs.
- Provide programs for teachers and administrators to help them improve student achievement and increasing parental involvement.
- Fund one school representative to attend the Annual Institute for Special Education Law.

- Assist in applying for various grant programs.
- Submit to monitoring by the Arkansas Department of Education to determine whether the districts are providing desegregated education to all Garland County students.
- Arrange annual meetings between a representative of the Arkansas Department of Education representative and the Garland County Education consortium to discuss enrollment, attendance and black/white ratios in Garland County public schools.

Ex. H at 3–13. As detailed below, the Districts have complied with those requirements since the Court’s approval of the Settlement Agreement.

Twenty years after the Court approved the Settlement Agreement, the Court held in a separate lawsuit that the School Choice Act of 1989 was unconstitutional. *Teague ex rel. T.T. v. Ark. Bd. of Educ.*, 873 F.Supp.2d 1055, 1065–68 (W.D. Ark. 2012) (Dawson, J.), vacated as moot sub nom. *Teague v. Cooper*, 720 F.3d 973 (8th Cir. 2013). That ruling became moot when the Arkansas General Assembly repealed the 1989 School Choice Act and replaced it with the Arkansas Public School Choice Act of 2013 (“2013 School Choice Act”).

Those changes in the Arkansas law incorporated into the Settlement Agreement concerned the Districts, who petitioned in May 2013 for declaratory relief seeking clarity as to the continued application and validity of the Settlement Agreement. Doc. 161. In June 2013, Judge Hendren granted that petition, ruling that the Settlement Agreement is “a consent desegregation plan of the Court applicable to all public school districts within Garland County, Arkansas, for the purpose of remedying the vestiges of prior de jure racial segregation within the public education system of that county” and that the Settlement Agreement should

stay in effect despite changes to the 1989 School Choice Act. Doc. 168 at 4–5.

Despite that finding, the order did not specify the vestiges of prior de jure racial segregation that remained in the Garland County public schools.

A year later, six of the Districts—not including Hot Springs—moved for relief from the Settlement Agreement under Fed. R. Civ. P. 60(b)(5). Doc. 174. That motion sought termination of the Settlement Agreement and relief from the 1992 order, arguing that it was no longer just or equitable to give the 1992 order or the Settlement Agreement prospective application after the repeal of the 1989 School Choice Act. *Id.* Hot Springs opposed the motion. Doc. 178. In March 2015, after holding a hearing, Judge Dawson denied the petition, concluding that the six movant districts had “not submitted any evidence to demonstrate full compliance with the [Settlement] Agreement, nor have they offered any proof that the vestiges of past discrimination have been eliminated.” Doc. 194 at 6. The petitioning districts appealed that ruling, and the Eighth Circuit affirmed that ruling. *Davis v. Hot Springs Sch. Dist.*, 833 F.3d 959, 965 (8th Cir. 2016).

II. The Districts have complied with the Settlement Agreement.

The Districts—all seven of them—now present the evidence that was lacking in 2014. That evidence shows that the Districts have faithfully performed their obligations under the Settlement Agreement and have eliminated the vestiges of past discrimination to the extent practicable. The following discussion summarizes that evidence for each of the Districts.

II.A. Cutter Morning Star School District.

Implementation of the School Choice Act of 1989. Cutter Morning Star has complied with the Settlement Agreement’s requirement that it implement the School Choice Act of 1989. Ex. A, Aff. of Cutter Morning Star School District, at 4, ¶ 14. The Arkansas Division of Elementary and Secondary Education (“DESE”) has monitored compliance with that requirement of the Settlement Agreement. *Id.* Its most recent annual report (“Monitoring Report”) demonstrates Cutter Morning Star’s compliance with the Settlement Agreement’s requirement that the district implement the School Choice Act of 1989. *Id.*; Ex. 1,² Garland County Desegregation Monitoring Report 2021–22, at 4–6. The Monitoring Report shows that Cutter Morning Star enrolled 133 students participating in school choice in the 2019–20 school year, 150 such students in 2020–21, and 154 such students in 2021–22. Ex. 1 at 4–6. Cutter Morning Star has thus implemented the School Choice Act of 1989.

Creation of the Garland County Education Consortium. Cutter Morning Star has also complied with the Settlement Agreement’s requirement that it participate in the organization of the Garland County Education Consortium. Ex. A at 4–5, ¶ 15. The Consortium meets at least once annually to carry out the duties established by the Settlement Agreement. *Id.* DESE has monitored Cutter Morning Star’s compliance with the Consortium requirement. *Id.*; Ex. 1 at 6. The

² A copy of the Monitoring Report is attached as Exhibit 1 to each of the affidavits attached in support to the motion. This brief will therefore refer to the Monitoring Report as Exhibit 1.

Monitoring Report includes an agenda from the 2022 annual meeting of the Consortium, which shows the attendance and participation of Cutter Morning Star. Ex. 1 at 109–11. Cutter Morning Star has therefore complied with this requirement of the Settlement Agreement, too.

Staff Development Training Programs. Cutter Morning Star has complied with this requirement. Ex. A at 5, ¶ 16. As with other requirements, DESE has monitored compliance with this obligation under the Settlement Agreement and has documented Cutter Morning Star’s compliance. *Id.*; Ex. 1 at 7, 24. Cutter Morning Star has provided staff development programs focusing on teacher assistance team training, civil rights awareness training, race relations, and multicultural counseling strategies. *Id.* Cutter Morning Star has thus complied with its obligation under the Settlement Agreement to provide staff development programs.

Multicultural and Self-Esteem Curriculum. Cutter Morning Star has also complied with this requirement under the Settlement Agreement, implementing a multicultural and self-esteem curriculum integrated into all subject areas and grade levels. Ex. A at 5, ¶ 17. That curriculum includes various materials, such as books, videos, and activities that promote positive self-image, cultural awareness, understanding, and respect among students of all backgrounds. *Id.*; Ex. 1 at 11–21, 24–27. Cutter Morning Star has therefore complied with this requirement of the Settlement Agreement as well.

Testing and Assessment. Cutter Morning Star has also complied with its obligation under the Settlement Agreement to implement staff training programs that teach educators how to measure and analyze students' academic achievement in a nondiscriminatory, unbiased manner. Ex. A at 5–6, ¶ 18. That training program covers topics like the use of objective assessment tools, avoiding bias in grading and evaluation, and identifying and addressing achievement gaps. *Id.* All Cutter Morning Star staff members involved in assessing student performance, including teachers, counselors, and administrators, have received this training. *Id.* As with the other areas, DESE has monitored Cutter Morning Star's compliance with this Settlement Agreement requirement and detailed those efforts. *Id.*; Ex. 1 at 3, 14–16, 24–25, 115–118. Cutter Morning Star has complied with this obligation.

Gifted and Talented Education Programs. Cutter Morning Star has also complied with its obligation to encourage participation by minority and underprivileged students in gifted and talented programs. Ex. A at 6, ¶ 19. DESE has documented those efforts. *Id.*; Ex. 1 at 3–4, 25–27. Cutter Morning Star has complied with its obligations in this area.

Improving student and teacher interactions. Cutter Morning Star has complied with this Settlement Agreement obligation by implementing programs for teachers and administrators to improve student achievement, school management, and parental involvement. Ex. A at 6, ¶ 20. Those programs include training on classroom management, establishing a school volunteer program, and promoting

cooperative learning. *Id.* Cutter Morning Star has also provided assistance with self-evaluation and compliance plans to ensure the efficacy and alignment of these programs with the goal of ending discrimination, as documented in the Monitoring Report. *Id.*; Ex. 1 at 8–18. Cutter Morning Star has thus met its obligations in this area.

Attendance at the Annual Institute for Special Education Law. This obligation has been met, too—DESE has continued to offer funding for at least one representative to attend the Annual Institute for Special Education Law each year on an ongoing basis. Ex. A at 6–7, ¶ 21; Ex. 1 at 7.

Grant programs. Cutter Morning Star has complied with this requirement by seeking and receiving grants, as well as DESE assistance. Ex. A at 7, ¶ 22. The Monitoring Report shows that during the 2021-22 and 2022-23 school years, Cutter Morning Star sought and received grants from several sources. Ex. 1 at 7. Cutter Morning Star has thus met its obligations under the Settlement Agreement.

DESE Monitoring. The Monitoring Report shows that Cutter Morning Star has complied with this requirement because the Monitoring Report is a record of DESE’s monitoring to ensure that desegregated education is provided to Garland County public school students. Ex. A at 7, ¶ 23. Cutter Morning Star has cooperated with that monitoring by implementing systems for data collection and reporting and by working collaboratively with DESE to ensure compliance. *Id.* That cooperation is reflected in the Monitoring Report, which was prepared in part by using the data provided by Cutter Morning Star. *Id.*; Ex. 1 at 2–3.

Annual Meeting with DESE Representative. Cutter Morning Star has also complied with this Settlement Agreement requirement, ensuring that the Garland County Education Consortium and a designated DESE representative meet annually to discuss enrollment, attendance, and black/white ratios in the Garland County public schools. Ex. A at 7–8, ¶ 24. Those meetings have promoted ongoing communication and collaboration between Cutter Morning Star and the DESE, identifying areas for improvement related to equity and inclusion in Cutter Morning Star. *Id.*; Ex. 1 at 6, 108–11. Cutter Morning Star has thus complied with the annual-meeting requirement.

II.B. Fountain Lake School District.

Implementation of the School Choice Act of 1989. Fountain Lake has complied with the Settlement Agreement’s requirement that it implement the School Choice Act of 1989. Ex. B Aff. of Fountain Lake School District, at 4, ¶ 14. The Arkansas Division of Elementary and Secondary Education (“DESE”) has monitored compliance with that requirement of the Settlement Agreement. *Id.* Its most recent annual report (“Monitoring Report”) demonstrates Fountain Lake’s compliance with the Settlement Agreement’s requirement that the district implement the School Choice Act of 1989. *Id.*; Ex. 1, Garland County Desegregation Monitoring Report 2021–22, at 4–6. The Monitoring Report shows that Fountain Lake enrolled 100 students participating in school choice in the 2019–20 school year, 92 such students in 2020–21, and 81 such students in 2021–22. Ex. 1 at 4–6. Fountain Lake has thus implemented the School Choice Act of 1989.

Creation of the Garland County Education Consortium. Fountain Lake has also complied with the Settlement Agreement's requirement that it participate in the organization of the Garland County Education Consortium. Ex. B at 4–5, ¶ 15. The Consortium meets at least once annually to carry out the duties established by the Settlement Agreement. *Id.* DESE has monitored Fountain Lake's compliance with the Consortium requirement. *Id.*; Ex. 1 at 6. The Monitoring Report includes an agenda from the 2022 annual meeting of the Consortium, which shows the attendance and participation of Fountain Lake. Ex. 1 at 109–11. Fountain Lake has therefore complied with this requirement of the Settlement Agreement, too.

Staff Development Training Programs. Fountain Lake has complied with this requirement. Ex. B at 5, ¶ 16. As with other requirements, DESE has monitored compliance with this obligation under the Settlement Agreement and has documented Fountain Lake's compliance. *Id.*; Ex. 1 at 7, 31. Fountain Lake has provided staff development programs focusing on teacher assistance team training, civil rights awareness training, race relations, and multicultural counseling strategies. *Id.* Fountain Lake has thus complied with its obligation under the Settlement Agreement to provide staff development programs.

Multicultural and Self-Esteem Curriculum. Fountain Lake has also complied with this requirement under the Settlement Agreement, implementing a multicultural and self-esteem curriculum integrated into all subject areas and grade levels. Ex. B at 5, ¶ 17. That curriculum includes several materials, such as books,

videos, and activities that promote positive self-image, cultural awareness, understanding, and respect among students of all backgrounds. *Id.*; Ex. 1 at 11–21, 31. Fountain Lake has therefore complied with this requirement of the Settlement Agreement as well.

Testing and Assessment. Fountain Lake has also complied with its obligation under the Settlement Agreement to implement staff training programs that teach educators how to measure and analyze students' academic achievement in a nondiscriminatory, unbiased manner. Ex. B at 5–6, ¶ 18. That training program covers topics like the use of objective assessment tools, avoiding bias in grading and evaluation, and identifying and addressing achievement gaps. *Id.* All Fountain Lake staff members involved in assessing student performance, including teachers, counselors, and administrators, have received this training. *Id.* As with the other areas, DESE has monitored Fountain Lake's compliance with this Settlement Agreement requirement and detailed those efforts. *Id.*; Ex. 1 at 3, 14–16, 24–25, 115–118. Fountain Lake has complied with this obligation.

Gifted and Talented Education Programs. Fountain Lake has also complied with its obligation to encourage participation by minority and underprivileged students in gifted and talented programs. Ex. B at 6, ¶ 19. DESE has documented those efforts. *Id.*; Ex. 1 at 3–4, 31–33. Fountain Lake has complied with its obligations in this area.

Improving student and teacher interactions. Fountain Lake has complied with this Settlement Agreement obligation by implementing programs for

teachers and administrators to improve student achievement, school management, and parental involvement. Ex. B at 6, ¶ 20. Those programs include training on classroom management, establishing a school volunteer program, and promoting cooperative learning. *Id.* Fountain Lake has also provided assistance with self-evaluation and compliance plans to ensure the efficacy and alignment of these programs with the goal of ending discrimination, as documented in the Monitoring Report. *Id.*; Ex. 1 at 8–18. Fountain Lake has thus met its obligations in this area.

Attendance at the Annual Institute for Special Education Law. This obligation has been met, too—DESE has continued to offer funding for at least one representative to attend the Annual Institute for Special Education Law each year on an ongoing basis. Ex. B at 7, ¶ 21; Ex. 1 at 7.

Grant programs. Fountain Lake has complied with this requirement by seeking and receiving grants, as well as DESE assistance. Ex. B at 7, ¶ 22. The Monitoring Report shows that during the 2021-22 and 2022-23 school years, Fountain Lake sought and received grants from several sources. Ex. 1 at 4, 33–34. Fountain Lake has thus met its obligations under the Settlement Agreement.

DESE Monitoring. The Monitoring Report shows that Fountain Lake has complied with this requirement because the Monitoring Report is a record of DESE's monitoring to ensure that desegregated education is provided to Garland County public school students. Ex. B at 7, ¶ 23. Fountain Lake has cooperated with that monitoring by implementing systems for data collection and reporting and by working collaboratively with DESE to ensure compliance. *Id.* That cooperation

is reflected in the Monitoring Report, which was prepared in part by using the data provided by Fountain Lake. *Id.*; Ex. 1 at 2–3.

Annual Meeting with DESE Representative. Fountain Lake has also complied with this Settlement Agreement requirement, ensuring that the Garland County Education Consortium and a designated DESE representative meet annually to discuss enrollment, attendance, and black/white ratios in the Garland County public schools. Ex. B at 7–8, ¶ 24. Those meetings have promoted ongoing communication and collaboration between Fountain Lake and the DESE, identifying areas for improvement related to equity and inclusion in Fountain Lake. *Id.*; Ex. 1 at 6, 108–11. Fountain Lake has thus complied with the annual-meeting requirement.

II.C. Hot Springs School District.

Implementation of the School Choice Act of 1989. Hot Springs has complied with the Settlement Agreement’s requirement that it implement the School Choice Act of 1989. Ex. C, Aff. of Hot Springs School District, at 4, ¶ 14. The Arkansas Division of Elementary and Secondary Education (“DESE”) has monitored compliance with that requirement of the Settlement Agreement. *Id.* Its most recent annual report (“Monitoring Report”) demonstrates Hot Springs’s compliance with the Settlement Agreement’s requirement that the district implement the School Choice Act of 1989. *Id.*; Ex. 1, Garland County Desegregation Monitoring Report 2021–22, at 4–6. The Monitoring Report shows that Hot Springs enrolled 170 students participating in school choice in the 2019–20 school year, 183 such

students in 2020-21, and 188 such students in 2021–22. Ex. 1 at 4–6. Hot Springs has thus implemented the School Choice Act of 1989.

Creation of the Garland County Education Consortium. Hot Springs has also complied with the Settlement Agreement’s requirement that it participate in the organization of the Garland County Education Consortium. Ex. C at 4, ¶ 15. The Consortium meets at least once annually to carry out the duties established by the Settlement Agreement. *Id.* DESE has monitored Hot Springs’s compliance with the Consortium requirement. *Id.*; Ex. 1 at 6. The Monitoring Report includes an agenda from the 2022 annual meeting of the Consortium, which shows the attendance and participation of Hot Springs. Ex. 1 at 109–11. Hot Springs has therefore complied with this requirement of the Settlement Agreement, too.

Staff Development Training Programs. Hot Springs has complied with this requirement. Ex. C at 5, ¶ 16. As with other requirements, DESE has monitored compliance with this obligation under the Settlement Agreement and has documented Hot Springs’s compliance. *Id.*; Ex. 1 at 7, 37. Hot Springs has provided staff development programs to improve school culture and teacher-student relationships, to increase cultural understanding toward racial understanding and equity, and to improve inclusive practices for students with learning disabilities. *Id.* Hot Springs has thus complied with its obligation under the Settlement Agreement to provide staff development programs.

Multicultural and Self-Esteem Curriculum. Hot Springs has also complied with this requirement under the Settlement Agreement, implementing a

multicultural and self-esteem curriculum integrated into all subject areas and grade levels. Ex. C at 5, ¶ 17. That curriculum includes several materials, such as books, videos, and activities that promote positive self-image, cultural awareness, understanding, and respect among students of all backgrounds. *Id.*; Ex. 1 at 11–21, 38–39. Hot Springs has therefore complied with this requirement of the Settlement Agreement as well.

Testing and Assessment. Hot Springs has also complied with its obligation under the Settlement Agreement to implement staff training programs that teach educators how to measure and analyze students' academic achievement in a nondiscriminatory, unbiased manner. Ex. C at 5–6, ¶ 18. That training program covers topics like the use of objective assessment tools, avoiding bias in grading and evaluation, and identifying and addressing achievement gaps. *Id.* All Hot Springs staff members involved in assessing student performance, including teachers, counselors, and administrators, have received this training. *Id.* As with the other areas, DESE has monitored Hot Springs's compliance with this Settlement Agreement requirement and detailed those efforts. *Id.*; Ex. 1 at 3, 15–16, 115–118. Hot Springs has complied with this obligation.

Gifted and Talented Education Programs. Hot Springs has also complied with its obligation to encourage participation by minority and underprivileged students in gifted and talented programs. Ex. C at 6, ¶ 19. DESE has documented those efforts. *Id.*; Ex. 1 at 3–4, 39–41. Hot Springs has complied with its obligations in this area.

Improving student and teacher interactions. Hot Springs has complied with this Settlement Agreement obligation by implementing programs for teachers and administrators to improve student achievement, school management, and parental involvement. Ex. C at 6, ¶ 20. Those programs include training on classroom management, establishing a school volunteer program, and promoting cooperative learning. *Id.* Hot Springs has also provided assistance with self-evaluation and compliance plans to ensure the efficacy and alignment of these programs with the goal of ending discrimination, as documented in the Monitoring Report. *Id.*; Ex. 1 at 8–18, 37. Hot Springs has thus met its obligations in this area.

Attendance at the Annual Institute for Special Education Law. This obligation has been met, too—DESE has continued to offer funding for at least one representative to attend the Annual Institute for Special Education Law each year on an ongoing basis. Ex. Cat 6–7, ¶ 21; Ex. 1 at 7.

Grant programs. Hot Springs has complied with this requirement by seeking and receiving grants, as well as DESE assistance. Ex. C at 7, ¶ 22. The Monitoring Report shows that during the 2021-22 and 2022-23 school years, Hot Springs sought and received grants from several sources totaling several million dollars. Ex. 1 at 4, 41. Hot Springs has thus met its obligations under the Settlement Agreement.

DESE Monitoring. The Monitoring Report shows that Hot Springs has complied with this requirement because the Monitoring Report is a record of DESE's monitoring to ensure that desegregated education is provided to Garland

County public school students. Ex. C at 7, ¶ 23. Hot Springs has cooperated with that monitoring by implementing systems for data collection and reporting and by working collaboratively with DESE to ensure compliance. *Id.* That cooperation is reflected in the Monitoring Report, which was prepared in part by using the data provided by Hot Springs. *Id.*; Ex. 1 at 2–3.

Annual Meeting with DESE Representative. Hot Springs has also complied with this Settlement Agreement requirement, ensuring that the Garland County Education Consortium and a designated DESE representative meet annually to discuss enrollment, attendance, and black/white ratios in the Garland County public schools. Ex. C at 7–8, ¶ 24. Those meetings have promoted ongoing communication and collaboration between Hot Springs and the DESE, identifying areas for improvement related to equity and inclusion in Hot Springs. *Id.*; Ex. 1 at 6, 108–11. Hot Springs has thus complied with the annual-meeting requirement.

II.D. Jessieville School District.

Implementation of the School Choice Act of 1989. Jessieville has complied with the Settlement Agreement’s requirement that it implement the School Choice Act of 1989. Ex. D, Aff. of Jessieville School District, at 4–5, ¶ 14. The Arkansas Division of Elementary and Secondary Education (“DESE”) has monitored compliance with that requirement of the Settlement Agreement. *Id.* Its most recent annual report (“Monitoring Report”) demonstrates Jessieville’s compliance with the Settlement Agreement’s requirement that the district implement the School Choice Act of 1989. *Id.*; Ex. 1, Garland County Desegregation Monitoring Report 2021–22, at 4–6. The Monitoring Report shows that Jessieville

enrolled 72 students participating in school choice in the 2019–20 school year, 66 such students in 2020–21, and 75 such students in 2021–22. Ex. 1 at 4–6.

Jessieville has thus implemented the School Choice Act of 1989.

Creation of the Garland County Education Consortium. Jessieville has also complied with the Settlement Agreement’s requirement that it participate in the organization of the Garland County Education Consortium. Ex. D at 5, ¶ 15. The Consortium meets at least once annually to carry out the duties established by the Settlement Agreement. *Id.* DESE has monitored Jessieville’s compliance with the Consortium requirement. *Id.*; Ex. 1 at 6. The Monitoring Report includes an agenda from the 2022 annual meeting of the Consortium, which shows the attendance and participation of Jessieville. Ex. 1 at 109–11. Jessieville has therefore complied with this requirement of the Settlement Agreement, too.

Staff Development Training Programs. Jessieville has complied with this requirement. Ex. D at 5, ¶ 16. As with other requirements, DESE has monitored compliance with this obligation under the Settlement Agreement and has documented Jessieville’s compliance. *Id.*; Ex. 1 at 7, 31. Jessieville has provided staff development programs focusing on teacher assistance team training, civil rights awareness training, race relations, and multicultural counseling strategies. *Id.* Jessieville has thus complied with its obligation under the Settlement Agreement to provide staff development programs.

Multicultural and Self-Esteem Curriculum. Jessieville has also complied with this requirement under the Settlement Agreement, implementing a

multicultural and self-esteem curriculum integrated into all subject areas and grade levels. Ex. D at 5–6, ¶ 17. That curriculum includes several materials, such as books, videos, and activities that promote positive self-image, cultural awareness, understanding, and respect among students of all backgrounds. *Id.*; Ex. 1 at 11–21, 45–46. Jessieville has therefore complied with this requirement of the Settlement Agreement as well.

Testing and Assessment. Jessieville has also complied with its obligation under the Settlement Agreement to implement staff training programs that teach educators how to measure and analyze students’ academic achievement in a nondiscriminatory, unbiased manner. Ex. D at 6, ¶ 18. That training program covers topics like the use of objective assessment tools, avoiding bias in grading and evaluation, and identifying and addressing achievement gaps. *Id.* All Jessieville staff members involved in assessing student performance, including teachers, counselors, and administrators, have received this training. *Id.* As with the other areas, DESE has monitored Jessieville’s compliance with this Settlement Agreement requirement and detailed those efforts. *Id.*; Ex. 1 at 3, 14–16, 45, 115–118. Jessieville has complied with this obligation.

Gifted and Talented Education Programs. Jessieville has also complied with its obligation to encourage participation by minority and underprivileged students in gifted and talented programs. Ex. D at 6–7, ¶ 19. DESE has documented those efforts. *Id.*; Ex. 1 at 3–4, 46–48. Jessieville has complied with its obligations in this area.

Improving student and teacher interactions. Jessieville has complied with this Settlement Agreement obligation by implementing programs for teachers and administrators to improve student achievement, school management, and parental involvement. Ex. D at 7, ¶ 20. Those programs include training on classroom management, establishing a school volunteer program, and promoting cooperative learning. *Id.* Jessieville has also provided assistance with self-evaluation and compliance plans to ensure the efficacy and alignment of these programs with the goal of ending discrimination, as documented in the Monitoring Report. *Id.*; Ex. 1 at 8–18. Jessieville has thus met its obligations in this area.

Attendance at the Annual Institute for Special Education Law. This obligation has been met, too—DESE has continued to offer funding for at least one representative to attend the Annual Institute for Special Education Law each year on an ongoing basis. Ex. D at 7, ¶ 21; Ex. 1 at 7.

Grant programs. Jessieville has complied with this requirement by seeking and receiving grants, as well as DESE assistance. Ex. D at 7–8, ¶ 22. The Monitoring Report shows that during the 2021-22 and 2022-23 school years, Jessieville sought and received grants from several sources. Ex. 1 at 4, 48. Jessieville has thus met its obligations under the Settlement Agreement.

DESE Monitoring. The Monitoring Report shows that Jessieville has complied with this requirement because the Monitoring Report is a record of DESE's monitoring to ensure that desegregated education is provided to Garland County public school students. Ex. D at 8, ¶ 23. Jessieville has cooperated with

that monitoring by implementing systems for data collection and reporting and by working collaboratively with DESE to ensure compliance. *Id.* That cooperation is reflected in the Monitoring Report, which was prepared in part by using the data provided by Jessieville. *Id.*; Ex. 1 at 2–3.

Annual Meeting with DESE Representative. Jessieville has also complied with this Settlement Agreement requirement, ensuring that the Garland County Education Consortium and a designated DESE representative meet annually to discuss enrollment, attendance, and black/white ratios in the Garland County public schools. Ex. D at 8, ¶ 24. Those meetings have promoted ongoing communication and collaboration between Jessieville and the DESE, identifying areas for improvement related to equity and inclusion in Jessieville. *Id.*; Ex. 1 at 6, 108–11. Jessieville has thus complied with the annual-meeting requirement.

II.E. Lake Hamilton School District.

Implementation of the School Choice Act of 1989. Lake Hamilton has complied with the Settlement Agreement’s requirement that it implement the School Choice Act of 1989. Ex. E, Aff. of Lake Hamilton School District, at 4, ¶ 14. The Arkansas Division of Elementary and Secondary Education (“DESE”) has monitored compliance with that requirement of the Settlement Agreement. *Id.* Its most recent annual report (“Monitoring Report”) demonstrates Lake Hamilton’s compliance with the Settlement Agreement’s requirement that the district implement the School Choice Act of 1989. *Id.*; Ex. 1, Garland County Desegregation Monitoring Report 2021–22, at 4–6. The Monitoring Report shows that Lake Hamilton enrolled 153 students participating in school choice in the 2019–20 school

year, 167 such students in 2020-21, and 195 such students in 2021–22. Ex. 1 at 4–6. Lake Hamilton has thus implemented the School Choice Act of 1989.

Creation of the Garland County Education Consortium. Lake Hamilton has also complied with the Settlement Agreement’s requirement that it participate in the organization of the Garland County Education Consortium. Ex. E at 4, ¶ 15. The Consortium meets at least once annually to carry out the duties established by the Settlement Agreement. *Id.* DESE has monitored Lake Hamilton’s compliance with the Consortium requirement. *Id.*; Ex. 1 at 6. The Monitoring Report includes an agenda from the 2022 annual meeting of the Consortium, which shows the attendance and participation of Lake Hamilton. Ex. 1 at 109–11. Lake Hamilton has therefore complied with this requirement of the Settlement Agreement, too.

Staff Development Training Programs. Lake Hamilton has complied with this requirement. Ex. E at 5, ¶ 16. As with other requirements, DESE has monitored compliance with this obligation under the Settlement Agreement and has documented Lake Hamilton’s compliance. *Id.*; Ex. 1 at 7, 51. Lake Hamilton has provided staff development programs focusing on teacher assistance team training, civil rights awareness training, race relations, and multicultural counseling strategies. *Id.* Lake Hamilton has thus complied with its obligation under the Settlement Agreement to provide staff development programs.

Multicultural and Self-Esteem Curriculum. Lake Hamilton has also complied with this requirement under the Settlement Agreement, implementing a

multicultural and self-esteem curriculum integrated into all subject areas and grade levels. Ex. E at 5, ¶ 17. That curriculum includes several materials, such as books, videos, and activities that promote positive self-image, cultural awareness, understanding, and respect among students of all backgrounds. *Id.*; Ex. 1 at 11–21, 51. Lake Hamilton has therefore complied with this requirement of the Settlement Agreement as well.

Testing and Assessment. Lake Hamilton has also complied with its obligation under the Settlement Agreement to implement staff training programs that teach educators how to measure and analyze students’ academic achievement in a nondiscriminatory, unbiased manner. Ex. E at 5–6, ¶ 18. That training program covers topics like the use of objective assessment tools, avoiding bias in grading and evaluation, and identifying and addressing achievement gaps. *Id.* All Lake Hamilton staff members involved in assessing student performance, including teachers, counselors, and administrators, have received this training. *Id.* As with the other areas, DESE has monitored Lake Hamilton’s compliance with this Settlement Agreement requirement and detailed those efforts. *Id.*; Ex. 1 at 3, 14–16, 45, 51, 115–118. Lake Hamilton has complied with this obligation.

Gifted and Talented Education Programs. Lake Hamilton has also complied with its obligation to encourage participation by minority and underprivileged students in gifted and talented programs. Ex. E at 6, ¶ 19. DESE has documented those efforts. *Id.*; Ex. 1 at 3–4, 52–54. Lake Hamilton has complied with its obligations in this area.

Improving student and teacher interactions. Lake Hamilton has complied with this Settlement Agreement obligation by implementing programs for teachers and administrators to improve student achievement, school management, and parental involvement. Ex. E at 6, ¶ 20. Those programs include training on classroom management, establishing a school volunteer program, and promoting cooperative learning. *Id.* Lake Hamilton has also provided assistance with self-evaluation and compliance plans to ensure the efficacy and alignment of these programs with the goal of ending discrimination, as documented in the Monitoring Report. *Id.*; Ex. 1 at 8–18. Lake Hamilton has thus met its obligations in this area.

Attendance at the Annual Institute for Special Education Law. This obligation has been met, too—DESE has continued to offer funding for at least one representative to attend the Annual Institute for Special Education Law each year on an ongoing basis. Ex. E at 6–7, ¶ 21; Ex. 1 at 7.

Grant programs. Lake Hamilton has complied with this requirement by seeking and receiving grants, as well as DESE assistance. Ex. E at 7, ¶ 22. The Monitoring Report shows that during the 2021-22 and 2022-23 school years, Lake Hamilton sought and received grants from several sources. Ex. 1 at 4, 54. Lake Hamilton has thus met its obligations under the Settlement Agreement.

DESE Monitoring. The Monitoring Report shows that Lake Hamilton has complied with this requirement because the Monitoring Report is a record of DESE's monitoring to ensure that desegregated education is provided to Garland County public school students. Ex. E at 7, ¶ 23. Lake Hamilton has cooperated

with that monitoring by implementing systems for data collection and reporting and by working collaboratively with DESE to ensure compliance. *Id.* That cooperation is reflected in the Monitoring Report, which was prepared in part by using the data provided by Lake Hamilton. *Id.*; Ex. 1 at 2–3.

Annual Meeting with DESE Representative. Lake Hamilton has also complied with this Settlement Agreement requirement, ensuring that the Garland County Education Consortium and a designated DESE representative meet annually to discuss enrollment, attendance, and black/white ratios in the Garland County public schools. Ex. E at 7–8, ¶ 24. Those meetings have promoted ongoing communication and collaboration between Lake Hamilton and the DESE, identifying areas for improvement related to equity and inclusion in Lake Hamilton. *Id.*; Ex. 1 at 6, 108–11. Lake Hamilton has thus complied with the annual-meeting requirement.

II.F. Lakeside School District.

Implementation of the School Choice Act of 1989. Lakeside has complied with the Settlement Agreement’s requirement that it implement the School Choice Act of 1989. Ex. F, Aff. of Lakeside School District, at 5, ¶ 14. The Arkansas Division of Elementary and Secondary Education (“DESE”) has monitored compliance with that requirement of the Settlement Agreement. *Id.* Its most recent annual report (“Monitoring Report”) demonstrates Lakeside’s compliance with the Settlement Agreement’s requirement that the district implement the School Choice Act of 1989. *Id.*; Ex. 1, Garland County Desegregation Monitoring Report 2021–22, at 4–6. The Monitoring Report shows that Lakeside enrolled 501

students participating in school choice in the 2019–20 school year, 521 such students in 2020–21, and 540 such students in 2021–22. Ex. 1 at 4–6. Lakeside has thus implemented the School Choice Act of 1989.

Creation of the Garland County Education Consortium. Lakeside has also complied with the Settlement Agreement’s requirement that it participate in the organization of the Garland County Education Consortium. Ex. F at 5, ¶ 15. The Consortium meets at least once annually to carry out the duties established by the Settlement Agreement. *Id.* DESE has monitored Lakeside’s compliance with the Consortium requirement. *Id.*; Ex. 1 at 6. The Monitoring Report includes an agenda from the 2022 annual meeting of the Consortium, which shows the attendance and participation of Lakeside. Ex. 1 at 109–11. Lakeside has therefore complied with this requirement of the Settlement Agreement, too.

Staff Development Training Programs. Lakeside has complied with this requirement. Ex. F at 5, ¶ 16. As with other requirements, DESE has monitored compliance with this obligation under the Settlement Agreement and has documented Lakeside’s compliance. *Id.*; Ex. 1 at 7, 58. Lakeside has provided staff development programs focusing on teacher assistance team training, civil rights awareness training, race relations, and multicultural counseling strategies. *Id.* Lakeside has thus complied with its obligation under the Settlement Agreement to provide staff development programs.

Multicultural and Self-Esteem Curriculum. Lakeside has also complied with this requirement under the Settlement Agreement, implementing a

multicultural and self-esteem curriculum integrated into all subject areas and grade levels. Ex. F at 6, ¶ 17. That curriculum includes several materials, such as books, videos, and activities that promote positive self-image, cultural awareness, understanding, and respect among students of all backgrounds. *Id.*; Ex. 1 at 11–21, 58–59. Lakeside has therefore complied with this requirement of the Settlement Agreement as well.

Testing and Assessment. Lakeside has also complied with its obligation under the Settlement Agreement to implement staff training programs that teach educators how to measure and analyze students' academic achievement in a nondiscriminatory, unbiased manner. Ex. F at 6, ¶ 18. That training program covers topics like the use of objective assessment tools, avoiding bias in grading and evaluation, and identifying and addressing achievement gaps. *Id.* All Lakeside staff members involved in assessing student performance, including teachers, counselors, and administrators, have received this training. *Id.* As with the other areas, DESE has monitored Lakeside's compliance with this Settlement Agreement requirement and detailed those efforts. *Id.*; Ex. 1 at 3, 14–16, 115–118. Lakeside has complied with this obligation.

Gifted and Talented Education Programs. Lakeside has also complied with its obligation to encourage participation by minority and underprivileged students in gifted and talented programs. Ex. F at 6–7, ¶ 19. DESE has documented those efforts. *Id.*; Ex. 1 at 3–4, 59–61. Lakeside has complied with its obligations in this area.

Improving student and teacher interactions. Lakeside has complied with this Settlement Agreement obligation by implementing programs for teachers and administrators to improve student achievement, school management, and parental involvement. Ex. F at 7, ¶ 20. Those programs include training on classroom management, establishing a school volunteer program, and promoting cooperative learning. *Id.* Lakeside has also provided assistance with self-evaluation and compliance plans to ensure the efficacy and alignment of these programs with the goal of ending discrimination, as documented in the Monitoring Report. *Id.*; Ex. 1 at 8–18, 58. Lakeside has thus met its obligations in this area.

Attendance at the Annual Institute for Special Education Law. This obligation has been met, too—DESE has continued to offer funding for at least one representative to attend the Annual Institute for Special Education Law each year on an ongoing basis. Ex. F at 7, ¶ 21; Ex. 1 at 7.

Grant programs. Lakeside has complied with this requirement by seeking and receiving grants, as well as DESE assistance. Ex. F at 8, ¶ 22. The Monitoring Report shows that during the 2021-22 and 2022-23 school years, Lakeside sought and received grants from several sources. Ex. 1 at 4, 61. Lakeside has thus met its obligations under the Settlement Agreement.

DESE Monitoring. The Monitoring Report shows that Lakeside has complied with this requirement because the Monitoring Report is a record of DESE's monitoring to ensure that desegregated education is provided to Garland County public school students. Ex. F at 8, ¶ 23. Lakeside has cooperated with that

monitoring by implementing systems for data collection and reporting and by working collaboratively with DESE to ensure compliance. *Id.* That cooperation is reflected in the Monitoring Report, which was prepared in part by using the data provided by Lakeside. *Id.*; Ex. 1 at 2–3.

Annual Meeting with DESE Representative. Lakeside has also complied with this Settlement Agreement requirement, ensuring that the Garland County Education Consortium and a designated DESE representative meet annually to discuss enrollment, attendance, and black/white ratios in the Garland County public schools. Ex. F at 8–9, ¶ 24. Those meetings have promoted ongoing communication and collaboration between Lakeside and the DESE, identifying areas for improvement related to equity and inclusion in Lakeside. *Id.*; Ex. 1 at 6, 108–11. Lakeside has thus complied with the annual-meeting requirement.

II.G. Mountain Pine School District.

Implementation of the School Choice Act of 1989. Mountain Pine has complied with the Settlement Agreement’s requirement that it implement the School Choice Act of 1989. Ex. G, Aff. of Mountain Pine School District, at 4–5, ¶ 14. The Arkansas Division of Elementary and Secondary Education (“DESE”) has monitored compliance with that requirement of the Settlement Agreement. *Id.* Its most recent annual report (“Monitoring Report”) demonstrates Mountain Pine’s compliance with the Settlement Agreement’s requirement that the district implement the School Choice Act of 1989. *Id.*; Ex. 1, Garland County Desegregation Monitoring Report 2021–22, at 4–6. The Monitoring Report shows that Mountain Pine enrolled 57 students participating in school choice in the 2019–20 school year,

53 such students in 2020-21, and 45 such students in 2021-22. Ex. 1 at 4-6.

Mountain Pine has thus implemented the School Choice Act of 1989.

Creation of the Garland County Education Consortium. Mountain Pine has also complied with the Settlement Agreement's requirement that it participate in the organization of the Garland County Education Consortium. Ex. G at 5, ¶ 15. The Consortium meets at least once annually to carry out the duties established by the Settlement Agreement. *Id.* DESE has monitored Mountain Pine's compliance with the Consortium requirement. *Id.*; Ex. 1 at 6. The Monitoring Report includes an agenda from the 2022 annual meeting of the Consortium, which shows the attendance and participation of Mountain Pine. Ex. 1 at 109-11. Mountain Pine has therefore complied with this requirement of the Settlement Agreement, too.

Staff Development Training Programs. Mountain Pine has complied with this requirement. Ex. G at 5, ¶ 16. As with other requirements, DESE has monitored compliance with this obligation under the Settlement Agreement and has documented Mountain Pine's compliance. *Id.*; Ex. 1 at 7, 65-66. That documentation shows that Mountain Pine surveyed staff regarding needed professional development opportunities, using identified areas needing development to formulate professional growth plans for teachers and incorporating training in those areas for all staff members. Ex. 1 at 65. Mountain Pine has provided staff development on civil rights awareness, race relations, the importance of multicultural education, understanding exceptional students, classroom management, professional learning communities, and cooperative learning. *Id.*

Mountain Pine requires teachers to attend training on reading appropriate to the grade and subject area they teach, and Mountain Pine offers further opportunities as needed. *Id.* Staff receive contracted professional development days, as well as professional development plans used to ensure that each staff member is able to develop sound teaching practices. *Id.* at 66. Mountain Pine has thus complied with its obligation under the Settlement Agreement to provide staff development programs.

Multicultural and Self-Esteem Curriculum. Mountain Pine has also complied with this requirement under the Settlement Agreement, implementing a multicultural and self-esteem curriculum integrated into all subject areas and grade levels. Ex. G at 5–6, ¶ 17. That curriculum includes several materials, such as books, videos, and activities that promote positive self-image, cultural awareness, understanding, and respect among students of all backgrounds. *Id.*; Ex. 1 at 11–21, 66–70 (detailing “continued curricula initiatives at Mountain Pine School District during the 2021–2022 school year”). Mountain Pine has therefore complied with this requirement of the Settlement Agreement as well.

Testing and Assessment. Mountain Pine has also complied with its obligation under the Settlement Agreement to implement staff training programs that teach educators how to measure and analyze students’ academic achievement in a nondiscriminatory, unbiased manner. Ex. G at 6, ¶ 18. That training program covers topics like the use of objective assessment tools, avoiding bias in grading and evaluation, and identifying and addressing achievement gaps. *Id.* All Mountain

Pine staff members involved in assessing student performance, including teachers, counselors, and administrators, have received this training. *Id.* As with the other areas, DESE has monitored Mountain Pine's compliance with this Settlement Agreement requirement and detailed those efforts. *Id.*; Ex. 1 at 3, 14–16, 65–68, 115–118. Mountain Pine has complied with this obligation.

Gifted and Talented Education Programs. Mountain Pine has also complied with its obligation to encourage participation by minority and underprivileged students in gifted and talented programs. Ex. G at 6–7, ¶ 19. DESE has documented those efforts. *Id.*; Ex. 1 at 69. Mountain Pine has complied with its obligations in this area.

Improving student and teacher interactions. Mountain Pine has complied with this Settlement Agreement obligation by implementing programs for teachers and administrators to improve student achievement, school management, and parental involvement. Ex. G at 7, ¶ 20. Those programs include training on classroom management, establishing a school volunteer program, and promoting cooperative learning. *Id.* Mountain Pine has also provided assistance with self-evaluation and compliance plans to ensure the efficacy and alignment of these programs with the goal of ending discrimination, as documented in the Monitoring Report. *Id.*; Ex. 1 at 8–18, 65–68. Mountain Pine has thus met its obligations in this area.

Attendance at the Annual Institute for Special Education Law. This obligation has been met, too—DESE has continued to offer funding for at least one

representative to attend the Annual Institute for Special Education Law each year on an ongoing basis. Ex. G at 7, ¶ 21; Ex. 1 at 7.

Grant programs. Mountain Pine has complied with this requirement by seeking and receiving grants, as well as DESE assistance. Ex. G at 8, ¶ 22. The Monitoring Report shows that during the 2021-22 and 2022-23 school years, Mountain Pine sought and received School Improvement Grants totaling approximately \$390,000. Ex. 1 at 70. Mountain Pine has thus met its obligations under the Settlement Agreement.

DESE Monitoring. The Monitoring Report shows that Mountain Pine has complied with this requirement because the Monitoring Report is a record of DESE's monitoring to ensure that desegregated education is provided to Garland County public school students. Ex. G at 8, ¶ 23. Mountain Pine has cooperated with that monitoring by implementing systems for data collection and reporting and by working collaboratively with DESE to ensure compliance. *Id.* That cooperation is reflected in the Monitoring Report, which was prepared in part by using the data provided by Mountain Pine. *Id.*

Annual Meeting with DESE Representative. Mountain Pine has also complied with this Settlement Agreement requirement, ensuring that the Garland County Education Consortium and a designated DESE representative meet annually to discuss enrollment, attendance, and black/white ratios in the Garland County public schools. Ex. G at 8, ¶ 24. Those meetings have promoted ongoing communication and collaboration between Mountain Pine and the DESE,

identifying areas for improvement related to equity and inclusion in Mountain Pine. *Id.*; Ex. 1 at 6, 108–11. Mountain Pine has thus complied with the annual-meeting requirement.

III. The Districts have complied with the *Green* factors, demonstrating the eradication of vestiges of past discrimination.

The Districts also present evidence that they have complied with the factors enumerated in *Green v. County Sch. Bd. of New Kent County, Va.*, 391 U.S. 430 (1968), which show that the vestiges of past discrimination have been eliminated to the extent practicable.

III.A. Cutter Morning Star School District.

Cutter Morning Star has complied with *Green* by ensuring that its students have equal access to high-quality facilities, transportation, extracurricular activities, and staff to achieve more equitable and integrated schools. Ex. A at 8, ¶ 25.

Facilities. Cutter Morning Star has ensured that all its schools have high-quality facilities by conducting regular maintenance and upgrades to school buildings and grounds, equitable allocation of resources for facility improvements, and the prioritization of schools in historically marginalized communities for improvements. Ex. A at 8, ¶ 26; Ex. 1 at 10.

Transportation. Cutter Morning Star has implemented transportation policies and programs that promote equitable access to schools for all students, including the provision of free or low-cost transportation for students who might not have access to reliable transportation, the equitable distribution of bus routes and

stops, and the development of transportation plans that prioritize the needs of historically marginalized communities. Ex. A at 8–9, ¶ 27; Ex. 1 at 21–22.

Extracurricular Activities. The Cutter Morning Star School District has implemented policies and programs that ensure equitable access to extracurricular activities for all students, including the development of a wide range of extracurricular activities that appeal to diverse student interests, the provision of financial assistance for low-income students to participate in extracurricular activities, and the implementation of policies that prevent discrimination and promote inclusion in extracurricular activities. Ex. A at 9, ¶ 28; Ex. 1 at 18.

Staff. Cutter Morning Star School District has implemented policies and programs that promote diversity, equity, and inclusion among faculty and staff, including the recruitment and retention of a diverse workforce, ongoing professional development on issues of equity and inclusion, and the implementation of anti-bias training programs for all staff. Ex. A at 9–10, ¶ 29; Ex. 1 at 8–9, 15–17, 24.

III.B. Fountain Lake School District.

Fountain Lake has complied with *Green* by ensuring that its students have equal access to high-quality facilities, transportation, extracurricular activities, and staff to achieve more equitable and integrated schools. Ex. B at 8, ¶ 25.

Facilities. Fountain Lake has ensured that all its schools have high-quality facilities by conducting regular maintenance and upgrades to school buildings and grounds, equitable allocation of resources for facility improvements, and the prioritization of schools in historically marginalized communities for improvements. Ex. B at 8, ¶ 26; Ex. 1 at 10.

Transportation. Fountain Lake has implemented transportation policies and programs that promote equitable access to schools for all students, including the provision of free or low-cost transportation for students who might not have access to reliable transportation, the equitable distribution of bus routes and stops, and the development of transportation plans that prioritize the needs of historically marginalized communities. Ex. B at 8–9, ¶ 27; Ex. 1 at 21–22.

Extracurricular Activities. The Fountain Lake School District has implemented policies and programs that ensure equitable access to extracurricular activities for all students, including the development of a wide range of extracurricular activities that appeal to diverse student interests, the provision of financial assistance for low-income students to participate in extracurricular activities, and the implementation of policies that prevent discrimination and promote inclusion in extracurricular activities. Ex. B at 9, ¶ 28; Ex. 1 at 18.

Staff. Fountain Lake School District has implemented policies and programs that promote diversity, equity, and inclusion among faculty and staff, including the recruitment and retention of a diverse workforce, ongoing professional development on issues of equity and inclusion, and the implementation of anti-bias training programs for all staff. Ex. B at 9, ¶ 29; Ex. 1 at 8–9, 15–17, 30–31.

III.C. Hot Springs School District.

Hot Springs has complied with *Green* by ensuring that its students have equal access to high-quality facilities, transportation, extracurricular activities, and staff to achieve more equitable and integrated schools. Ex. C at 8, ¶ 25.

Facilities. Hot Springs has ensured that all its schools have high-quality facilities by conducting regular maintenance and upgrades to school buildings and grounds, equitable allocation of resources for facility improvements, and the prioritization of schools in historically marginalized communities for improvements. Ex. C at 8, ¶ 26; Ex. 1 at 10.

Transportation. Hot Springs has implemented transportation policies and programs that promote equitable access to schools for all students, including the provision of free or low-cost transportation for students who might not have access to reliable transportation, the equitable distribution of bus routes and stops, and the development of transportation plans that prioritize the needs of historically marginalized communities. Ex. C at 8–9, ¶ 27; Ex. 1 at 21–22.

Extracurricular Activities. The Hot Springs School District has implemented policies and programs that ensure equitable access to extracurricular activities for all students, including the development of a wide range of extracurricular activities that appeal to diverse student interests, the provision of financial assistance for low-income students to participate in extracurricular activities, and the implementation of policies that prevent discrimination and promote inclusion in extracurricular activities. Ex. C at 9, ¶ 28; Ex. 1 at 18.

Staff. Hot Springs School District has implemented policies and programs that promote diversity, equity, and inclusion among faculty and staff, including the recruitment and retention of a diverse workforce, ongoing professional development

on issues of equity and inclusion, and the implementation of anti-bias training programs for all staff. Ex. C at 9, ¶ 29; Ex. 1 at 8–9, 15–17, 36–37.

III.D. Jessieville School District.

Jessieville has complied with *Green* by ensuring that its students have equal access to high-quality facilities, transportation, extracurricular activities, and staff to achieve more equitable and integrated schools. Ex. D at 8–9, ¶ 25.

Facilities. Jessieville has ensured that all its schools have high-quality facilities by conducting regular maintenance and upgrades to school buildings and grounds, equitable allocation of resources for facility improvements, and the prioritization of schools in historically marginalized communities for improvements. Ex. D at 9, ¶ 26; Ex. 1 at 10.

Transportation. Jessieville has implemented transportation policies and programs that promote equitable access to schools for all students, including the provision of free or low-cost transportation for students who might not have access to reliable transportation, the equitable distribution of bus routes and stops, and the development of transportation plans that prioritize the needs of historically marginalized communities. Ex. D at 9, ¶ 27; Ex. 1 at 21–22.

Extracurricular Activities. The Jessieville School District has implemented policies and programs that ensure equitable access to extracurricular activities for all students, including the development of a wide range of extracurricular activities that appeal to diverse student interests, the provision of financial assistance for low-income students to participate in extracurricular

activities, and the implementation of policies that prevent discrimination and promote inclusion in extracurricular activities. Ex. D at 9–10, ¶ 28; Ex. 1 at 18.

Staff. Jessieville School District has implemented policies and programs that promote diversity, equity, and inclusion among faculty and staff, including the recruitment and retention of a diverse workforce, ongoing professional development on issues of equity and inclusion, and the implementation of anti-bias training programs for all staff. Ex. D at 10, ¶ 29; Ex. 1 at 8–9, 15–17, 44–45.

III.E. Lake Hamilton School District.

Lake Hamilton has complied with *Green* by ensuring that its students have equal access to high-quality facilities, transportation, extracurricular activities, and staff to achieve more equitable and integrated schools. Ex. E at 8, ¶ 25.

Facilities. Lake Hamilton has ensured that all its schools have high-quality facilities by conducting regular maintenance and upgrades to school buildings and grounds, equitable allocation of resources for facility improvements, and the prioritization of schools in historically marginalized communities for improvements. Ex. E at 8, ¶ 26; Ex. 1 at 10.

Transportation. Lake Hamilton has implemented transportation policies and programs that promote equitable access to schools for all students, including the provision of free or low-cost transportation for students who might not have access to reliable transportation, the equitable distribution of bus routes and stops, and the development of transportation plans that prioritize the needs of historically marginalized communities. Ex. E at 8–9, ¶ 27; Ex. 1 at 21–22.

Extracurricular Activities. The Lake Hamilton School District has implemented policies and programs that ensure equitable access to extracurricular activities for all students, including the development of a wide range of extracurricular activities that appeal to diverse student interests, the provision of financial assistance for low-income students to participate in extracurricular activities, and the implementation of policies that prevent discrimination and promote inclusion in extracurricular activities. Ex. E at 9, ¶ 28; Ex. 1 at 18.

Staff. Lake Hamilton School District has implemented policies and programs that promote diversity, equity, and inclusion among faculty and staff, including the recruitment and retention of a diverse workforce, ongoing professional development on issues of equity and inclusion, and the implementation of anti-bias training programs for all staff. Ex. E at 9, ¶ 29; Ex. 1 at 8–9, 15–17, 50–51.

III.F. Lakeside School District.

Lakeside has complied with *Green* by ensuring that its students have equal access to high-quality facilities, transportation, extracurricular activities, and staff to achieve more equitable and integrated schools. Ex. F at 9, ¶ 25.

Facilities. Lakeside has ensured that all its schools have high-quality facilities by conducting regular maintenance and upgrades to school buildings and grounds, equitable allocation of resources for facility improvements, and the prioritization of schools in historically marginalized communities for improvements. Ex. F at 9, ¶ 26; Ex. 1 at 10.

Transportation. Lakeside has implemented transportation policies and programs that promote equitable access to schools for all students, including the

provision of free or low-cost transportation for students who might not have access to reliable transportation, the equitable distribution of bus routes and stops, and the development of transportation plans that prioritize the needs of historically marginalized communities. Ex. F at 9–10, ¶ 27; Ex. 1 at 21–22.

Extracurricular Activities. The Lakeside School District has implemented policies and programs that ensure equitable access to extracurricular activities for all students, including the development of a wide range of extracurricular activities that appeal to diverse student interests, the provision of financial assistance for low-income students to participate in extracurricular activities, and the implementation of policies that prevent discrimination and promote inclusion in extracurricular activities. Ex. F at 10, ¶ 28; Ex. 1 at 18.

Staff. Lakeside School District has implemented policies and programs that promote diversity, equity, and inclusion among faculty and staff, including the recruitment and retention of a diverse workforce, ongoing professional development on issues of equity and inclusion, and the implementation of anti-bias training programs for all staff. Ex. F at 10, ¶ 29; Ex. 1 at 8–9, 15–17, 57–58.

III.G. Mountain Pine School District.

Mountain Pine has complied with *Green* by ensuring that its students have equal access to high-quality facilities, transportation, extracurricular activities, and staff to achieve more equitable and integrated schools. Ex. G at 9, ¶ 25.

Facilities. Mountain Pine has ensured that all its schools have high-quality facilities by conducting regular maintenance and upgrades to school buildings and grounds, equitable allocation of resources for facility improvements, and the

prioritization of schools in historically marginalized communities for improvements. Ex. G at 9, ¶ 26; Ex. 1 at 10.

Transportation. Mountain Pine has implemented transportation policies and programs that promote equitable access to schools for all students, including the provision of free or low-cost transportation for students who might not have access to reliable transportation, the equitable distribution of bus routes and stops, and the development of transportation plans that prioritize the needs of historically marginalized communities. Ex. G at 9, ¶ 27; Ex. 1 at 21–22.

Extracurricular Activities. The Mountain Pine School District has implemented policies and programs that ensure equitable access to extracurricular activities for all students, including the development of a wide range of extracurricular activities that appeal to diverse student interests, the provision of financial assistance for low-income students to participate in extracurricular activities, and the implementation of policies that prevent discrimination and promote inclusion in extracurricular activities. Ex. G at 10, ¶ 28; Ex. 1 at 18.

Staff. Mountain Pine School District has implemented policies and programs that promote diversity, equity, and inclusion among faculty and staff, including the recruitment and retention of a diverse workforce, ongoing professional development on issues of equity and inclusion, and the implementation of anti-bias training programs for all staff. Ex. G at 10, ¶ 29; Ex. 1 at 8–9, 15–17, 64–65.

ARGUMENT

“From the very first, federal supervision of local school systems was intended as a **temporary** measure to remedy past discrimination.” *Bd. of Educ. v. Dowell*, 498 U.S. 237, 247 (1991) (emphasis added). And “the longer an injunction or consent decree stays in place, the greater the risk that it will improperly interfere with a State’s democratic processes.” *Horne v. Flores*, 557 U.S. 433, 453 (2009). Rather than remaining temporary, the Settlement Agreement has persisted for more than three decades. Over those long years, the Districts have complied in good faith with their obligations under the Settlement Agreement, and those efforts have eliminated the vestiges of past discrimination to the extent practicable under the circumstances that the Districts face in Garland County. It is time to free the Districts from the Settlement Agreement.

To obtain relief from the Settlement Agreement, the Districts must show that they “complied in good faith with the desegregation decree since it was entered” and that “the vestiges of past discrimination ha[ve] been eliminated to the extent practicable.” *Little Rock Sch. Dist. v. Arkansas*, 664 F.3d 738, 744–45 (8th Cir. 2011). The affidavits for each of the Districts attached to their motion show that they have met that standard and should be released from the Settlement Agreement’s obligations.

I. The Districts have complied in good faith with the Settlement Agreement.

The Court evaluates the Districts’ “objective compliance” with the Settlement Agreement “in the same fashion as [it] would evaluate compliance with the terms of any contract, simply by applying the terms of the contract between the parties to facts that have arisen since its creation.” *Little Rock*, 664 F.3d at 745 (citations and

internal quotation marks omitted). Good faith in this context requires the Districts to demonstrate “to the public and to the parents and students of the once disfavored race, its good-faith commitment to the whole of the court's decree and to those provisions of the law and the Constitution that were the predicate for judicial intervention in the first instance.” *Id.* “In considering these factors, a court should give particular attention to the school system’s record of compliance. A school system is better positioned to demonstrate its good-faith commitment to a constitutional course of action when its policies form a consistent pattern of lawful conduct directed to eliminating earlier violations.” *Freeman v. Pitts*, 503 U.S. 467, 491 (1992).

The Districts have complied with the Settlement Agreement since its inception. *See* Ex. A–G at ¶ 13. As laid out in detail above, each of the Districts’ affidavits shows their step-by-step compliance with the requirements of the Settlement Agreement. *See generally* Ex. A–G. The following provides a general overview of the Districts’ compliance with each and every requirement under the Settlement Agreement.

Implementation of the School Choice Act of 1989. The first obligation under the Settlement Agreement is implementation of the School Choice Act of 1989. Ex. H at 2. The Districts’ affidavits and the Monitoring Report show that each of the Districts has complied in good faith with this requirement of the Settlement Agreement. *See* Ex. A–G, ¶ 14. The Monitoring Report contains detailed information about each of the Districts’ implementation of the School

Choice Act of 1989. Ex. 1 at 4–6. The Districts have therefore complied with their obligation to implement the School Choice Act of 1989.

Creation of the Garland County Education Consortium. The Districts’ affidavits and the Monitoring Report also show compliance with the requirement that the Districts create the Consortium. *See* Ex. H at 3; Ex. A–G, ¶ 15; Ex. 1 at 6, 109–11. The Consortium meets at least once annually to carry out the duties established by the Settlement Agreement. *Id.* DESE has monitored the Districts’ compliance with the Consortium requirement. *Id.*; Ex. 1 at 6. The Monitoring Report includes an agenda from the 2022 annual meeting of the Consortium, which shows the attendance and participation of Jessieville. Ex. 1 at 109–11. The Districts have therefore complied with this obligation under the Settlement Agreement.

Staff Development Training Programs. The Districts have complied with the obligation under the Settlement Agreement to provide staff development programs targeting teacher interventions with at-risk students, civil rights awareness, race relations, and multicultural counseling. *See* Ex. H at 5–6; Ex. A–G, ¶ 16. The Monitoring Report documents those efforts, showing the programs that the Districts provided to their staffs. Ex. 1 at 24, 31, 37, 45, 51, 58, 65. The Districts have therefore complied with this requirement of the Settlement Agreement.

Multicultural and Self-Esteem Curriculum. The next requirement under the Settlement Agreement is the development of curricula including multicultural

and self-esteem components. Ex. H at 7. The Districts have also complied with this requirement. *See* Ex. A–G, ¶ 17. The Monitoring Report details that compliance, showing the specific curriculum components adopted in compliance with the Settlement Agreement. Ex. 1 at 24–25, 31, 38–39, 45–46, 51, 58, 66–68. The Districts have complied with this requirement of the Settlement Agreement, too.

Testing and Assessment. The Settlement Agreement also requires the Districts to assist the DESE in collecting and analyzing student test score data to address achievement gaps between African-American and white students, as well as to implement training to conduct that assessment without discrimination or bias. Ex. H at 8. The Districts have complied with that obligation by implementing staff development programs that address objective assessment, avoiding bias in assessment, and identifying and addressing achievement gaps. *See* Ex. A–G, ¶ 18. The Monitoring Report contains the data provided by the Districts on testing that they have conducted. Ex. 1 at 115–18. The Districts have complied with this obligation under the Settlement Agreement.

Gifted and Talented Education Programs. This provision of the Settlement Agreement required the Districts to address over-identification of minority students in special education and the under-identification of minority students in gifted and talented education. Ex. H at 9. Each of the Districts has complied with that requirement by encouraging participation by minority and underprivileged students in gifted and talented programs. *See* Ex. A–G, ¶ 19. The Monitoring Report provides data showing the numbers of students participating in

gifted and talented and special education programs in each District, with those numbers broken out by race. Ex. 1 at 25–27, 32–33, 39–41, 46–48, 52–54, 59–61, 69–70. The Monitoring Report also compares that data to the student body as a whole. Ex. 1 at 119–26. The Districts have complied with this obligation under the Settlement Agreement.

Improving student and teacher interactions. This provision of the Settlement Agreement requires the Districts to address “the day to day relationship between the student and the teacher” by addressing student achievement, effective school management, parental involvement, classroom management, volunteering, cooperative learning, and equity. Ex. H at 10–11. The Districts have complied with this requirement by implementing programs that provide training to their staffs in those areas. *See* Ex. A–G, ¶ 20. The Monitoring Report details those efforts. Ex. 1 at 24, 31, 37, 45, 51, 58, 65. The Districts have thus complied with this requirement.

Attendance at the Annual Institute for Special Education Law. The Consortium has sent a representative to the National Institute on Legal Issues for Educating Individuals with Disabilities in compliance with this requirement of the Settlement Agreement. *See* Ex. A–G, ¶ 21; Ex. 1 at 7.

Grant programs. The Settlement Agreement also requires the Districts to apply for grants in several areas. Ex. H at 11–12. The Districts have complied with that obligation by seeking and obtaining many grants. *See* Ex. A–G, ¶ 22. The Monitoring Report shows the grants awarded to the Districts for the 2021–22 school

year. Ex. 1 at 27, 33, 41, 48, 54, 61, 70. The Districts have complied with this requirement under the Settlement Agreement.

DESE Monitoring. The Settlement Agreement requires DESE to provide equity monitoring and for the Districts to participate in that monitoring by providing necessary information. Ex. H at 12–13. The Districts have complied with that requirement by collecting the data needed and providing it to DESE, which uses that data to prepare the Monitoring Report. *See* Ex. A–G, ¶ 23; Ex. 1 at 2–3. The Districts have complied with this requirement.

Annual Meeting with DESE Representative. This provision requires DESE to send a representative to meet at least once each year with the Garland County Education Consortium to discuss enrollment, attendance, and black-white ratios in Garland County public schools. Ex. H at 13. The Districts have complied with this requirement by ensuring that the required meeting has occurred each year. *See* Ex. A–G, ¶ 24; Ex. 1 at 109.

The Districts have therefore complied with their requirements under the Settlement Agreement. And those efforts have been in good faith, too. None of the Districts has received complaints from anyone about any aspect of their compliance with the Settlement Agreement (*see* Ex. A–G, ¶ 30), which shows the Districts’ “consistent pattern of lawful conduct” in complying with the Settlement Agreement. *Freeman*, 503 U.S. at 491. The DESE’s consistent public monitoring as recorded in its annual Monitoring Reports further demonstrates clearly to the public and to all parents and students the Districts’ good-faith commitment to complying with their

obligations under the Settlement Agreement. The Districts have thus complied in good faith with the Settlement Agreement.

II. The Districts have eliminated the vestiges of past discrimination to the extent practicable under the circumstances. Error! Bookmark not defined.

Another part of the good-faith inquiry is “whether the vestiges of past discrimination ha[ve] been eliminated to the extent practicable.” *Smith v. Bd. of Educ. of Palestine-Wheatley Sch. Dist.*, 769 F.3d 566, 571 (8th Cir. 2014) (quoting *Freeman*). This consideration requires the Court to examine “every facet of school operations—faculty, staff, transportation, extra-curricular activities and facilities” to determine whether they bear any “indicia of a segregated system.” *Dowell*, 498 U.S. at 249 (quoting *Green v. New Kent County Sch. Board*, 391 U.S. 430 (1968)).

This analysis must start from the understanding that it is unclear what constitutional violation the Settlement Agreement was meant to remedy.

Generally, “a school board is entitled to a rather precise statement of its obligations under a desegregation decree.” *Dowell*, 498 U.S. at 246 (citing *Pasadena City Bd. of Education v. Spangler*, 427 U.S. 424 (1976)). The Districts have lacked specificity from the start. When the Court approved the Settlement Agreement, it made no finding of illegal interdistrict segregation in the Garland County public schools. Doc. 82. The first time the Court made any finding relating to illegal segregation came two decades later when Judge Hendren found that the Settlement Agreement served the “purpose of remedying the vestiges of prior de jure racial segregation within the public education system of that county.” Doc. 168 at 5. Even then, the Court did not identify specifically the vestiges to be remedied. *Id.* Accordingly,

assessment of this factor is somewhat difficult because of the vague contours of the Settlement Agreement.³

But despite the lack of specificity, the Districts can demonstrate compliance with the *Green* factors because the Districts do not discriminate in any regard in faculty, staff, transportation, extra-curricular activities, and facilities. The Districts' affidavits show that they do not discriminate in any of the areas that the *Green* factors examine. In each of the Districts, every student has access to the same facilities, and the Districts provide regular, ongoing maintenance and upgrades to facilities on an equitable basis. Ex. A–G, ¶ 26. Each of the Districts provides transportation to promote equitable access for all students, including free or low-cost transportation for students who lack reliable transportation and equitable distribution of bus routes and bus stops. Ex. A–G, ¶ 27. Extracurricular activities are made accessible to all students, including the development of a wide range of activities that appeal to diverse student interests, the provision of financial assistance to promote participation, and the implementation of policies to promote inclusion and prevent discrimination. Ex. A–G, ¶ 28. And each of the Districts has implemented policies and procedures to promote diverse staffs, ensuring equal access to quality faculty and staff. Ex. A–G, ¶ 29.

³ The Districts acknowledge that they—through the actions of past boards and administrators—participated in setting the terms of the Settlement Agreement and accept that responsibility. This discussion serves not to point fingers but rather to establish the fact that the Settlement Agreement does not identify specific vestiges of discrimination to be remedied.

DESE has also monitored the Districts' efforts in these areas, which are detailed in the Monitoring Report. As detailed in that report, each of the Districts has ensured that decisions about the selection of school building sites, planning of new facilities and renovations, and closings of existing facilities do not limit accessibility to students and do not limit desegregation of the Districts. Ex. 1 at 10. DESE found "no evidence of decisions made by the school districts in Garland County regarding the selection and planning of new school building sites, renovations, or closings that limit accessibility to students or limit desegregation of the local school districts." *Id.*

DESE also monitored transportation to ensure that policies and procedures prevent disproportionate travel time to and from school among identifiable groups of students while ensuring that all students receive transportation services for which they are eligible. *Id.* at 21–22. The success of those policies is reflected in the attendance rates for each of the Districts, which meet or exceed the state average for African-American, Hispanic, and white students. *Id.* at 22.

The Monitoring Report also documents the Districts' efforts to ensure that students have access to and contact with diverse certified personnel through the development and implementation of nondiscriminatory hiring, placement, and compensation policies. Ex. 1 at 16. DESE has supported the Districts in recruiting minority staff members. *Id.* at 147–48. And the Districts have adopted plans to recruit minority staff members that include assessment of their efforts,

identification of areas for improvement, and implementation of action plans to affect that improvement. *Id.* at 149–78.

The Districts bear no “indicia of a segregated system.” The affidavits and the Monitoring Report prove that the Districts have achieved unitary status by offering equal access to facilities, transportation, extracurricular activities, and staff, and that equal access, to the extent practicable, has eliminated any vestiges of past discrimination that might have been present long ago

CONCLUSION

As *Dowell* emphasized, neither the principles of equity nor the Constitution “condemn a school district, once governed by a board which intentionally discriminated, to judicial tutelage for the indefinite future.” 498 U.S. at 249. Through their affidavits and the Monitoring Report, the Districts have shown that they have complied in good faith with the Settlement Agreement and that they have eliminated the vestiges of past discrimination to the extent practicable. Accordingly, the Court should grant the motion, terminate the 1992 order adopting the Settlement Agreement as a consent decree, and free the Districts from continuing obligations under the Settlement Agreement.

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